

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

EXITEXCHANGE CORP

*Plaintiff,*

vs.

FRIENDFINDER NETWORKS, INC

*Defendant.*

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Case No. 2:13-cv-00396-JRG

**JURY TRIAL DEMANDED**

**PLAINTIFF EXITEXCHANGE'S RESPONSE  
TO DEFENDANT FRIENDFINDER NETWORKS, INC.'S MOTION TO DISMISS  
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

This matter comes before the Court on the motion (Dkt. 67) of Defendant FriendFinder Network, Inc. (hereinafter “Defendant”) to dismiss the Complaint of Plaintiff ExitExchange Corp. (hereinafter “ExitExchange”).

ExitExchange has considered the applicable law cited by Defendant, and notes that Defendant states:

Under the Plan Injunction and the Confirmation Order, ExitExchange is forever barred, estopped, and enjoined from asserting a claim against FFNI based on *prepetition* liabilities against FFNI. See Plan at § 11.03(a); Confirmation Order at ¶ 40(e).

Dkt. 67 at p. 5 (emphasis added).

ExitExchange respectfully submits that it will limit its request for damages and relief to Defendant’s post-confirmation activity; that is only activity occurring after December 17, 2013. As the Confirmation Order was entered December 16, 2013, this should provide clear deliniation that ExitExchange’s reques for damages and relief are not precluded by the Confirmation Order.

Patent law provides that each act of patent infringement constitutes a separate cause of action. *See A.C. Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d at 1031 (treating patent infringement as a continuing tort); *Shields v. Halliburton Co.*, 493 F.Supp. 1376, 1381 (W.D.La.1980), *aff’d*, 667 F.2d 1232 (1982). Therefore acts of infringement that occur post-confirmation are separate causes of action from those that occur pre-confirmation, and the former necessarily give rise only to post-confirmation claims. Infringement conduct occurring *after* confirmation is not discharged at confirmation. *See* 11 U.S.C. § 1141(d)(1) “(the confirmation of a plan-- (A) discharges the debtor from any debt that arose *before* the date of such confirmation”). *See also In re Cambridge Biotech Corp.*, 186 B.R. 9, 14 (Bkrtcy.D.Mass.,1995); and *In re Dahlgren Intern., Inc.* 147 B.R. 393, 404 Fn. 16 (N.D.Tex.,1992).

Stated another way, 11 U.S.C. § 1141(d)(1) does not discharge any claim which arises from an infringer's actions post-confirmation, a bankruptcy proceeding does not absolve Defendants of liability incurred due to post-confirmation activities.

#### IV. CONCLUSION

For the foregoing reasons, ExitExchange respectfully requests that the Court deny the Defendant's Motion to Dismiss.

Respectfully submitted,

Dated: February 27, 2014

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ATTORNEYS FOR PLAINTIFF  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served this 27<sup>th</sup> day of February, 2014, with a copy of this document via electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Elizabeth L. DeRieux